ment by the petitioner of a *bona fide* domicile. A *bona fide* domicile is composed of two requisites: (1) intent, and (2) physical presence. Apart from special requirements such as exist in New York and a few other states, the majority of the courts would recognize a foreign decree if the above requirements are established. The states requiring such requisites have accomplished the purpose of protecting the marital status of their citizens. This seems to be a desirable limitation on the recognition of foreign divorce decrees.

R. W. VANDEMARK

# EQUITY

## JURISDICTION OF EQUITY TO ENJOIN CITIZENS SUING IN A FOREIGN COUNTRY

Labak and Grazner were residents of Canton, Ohio. On January 19, 1935, Labak instituted a suit in Czechoslovakia upon a grocery account alleged due from Grazner and three others. Joseph Grazner had been discharged in bankruptcy and the account had been listed as a claim against his estate. This was admitted by demurrer as was the fact that the other plaintiffs named in the Labak suit had never contracted for the debt upon which they were being sued. The plaintiff sought to enjoin further proceedings by the defendant in Czechoslovakia. The demurrer by the defendant was overruled. The trial court issued an injunction, which decree was affirmed by the court of appeals. *Labak* v. *Grazner, et al.*, 23 Ohio Abs. 57, 6 N.E. (2nd) 790 (1937).

In transitory actions, the law gives a party the right to bring the action in any court that acquires jurisdiction; and based on the assumption that the foreign court can do full and complete justice, it is not inequitable for one to choose to litigate his claim in a forum that will be more favorable to him. *Royal League* v. *Kavanaugh*, 233 Ill. 175, 134 Ill. App. 75, 84 N.E. 178 (1908); *Carson* v. *Dunham*, 149 Mass. 52, 14 Am. St. Rep. 397, 20 N.E. 312 (1889); *Thorndike* v. *Thorndike*, 142 Ill. 450, 32 N.E. 510, 21 L.R.A. 71 (1892); *Edgell* v. *Clark*, 45 N.Y. Supp. 979 (1897); *Delaware R. & W. R. Co.* v. *Ashelman*, 300 Pa. 291, 150 Atl. 475, 69 L.R.A. 588 (1930); *Fed. Trust Co.* v. *Conklin*, 87 N.J. Eq. 185, 99 Atl. 109 (1916). Whereever the parties are residents, however, the court, having authority to issue its decree in personam, may, in a proper case, enjoin those within its jurisdiction from prosecuting a suit in another state; and such decree is not an interference with the proceedings of a foreign court. Chaffee and Simpson, *Cases on Equity*, 1934, vol. I, p. 164; *Gordon* v. *Munn*,

81 Kan. 537, 106 Pac. 286, 25 L.R.A. (N.S.) 917 (1910); *Cole* v. *Cunningham*, 133 U.S. 107, 10 Sup. Ct. 269 (1889); *Rader* v. *Stubblefield*, 43 Wash. 334, 86 Pac. 560 (1906).

Although the courts have this power, they are reluctant to exercise it unless the failure to do so would be inequitable and unconscionable. *Jones* v. *Hughes*, 156 Iowa 684, 137 N.W. 1023, 42 L.R.A. (N.S.) 502 (1912); *Bigelow* v. *Old Dominion Cop. Mining Co.*, 74 N.J. Eq. 457, 71 Atl. 153 (1908); *Hawkins* v. *Ireland*, 64 Minn. 339, 67 N.W. 73 (1896). Some courts have refused except in extreme cases to issue an injunction where a suit has already been started, because they felt it would violate interstate comity. *Harris* v. *Pullman*, 84 Ill. 20, 25 Am. Rep. 416 (1876); *Mead* v. *Merritt*, 2 Paige, 402 (1831); *Allison* v. *Eagle Inc. Co.*, 144 App. Div. 74, 128 N.Y. 817 (1911); *Peck* v. *Jenness*, 7 How. 612 (1849).

Equity will enjoin foreign suits when the parties seek by this means (1) to avoid a local policy of their own state, or by concurrent litigation (2) to obtain a preference, or (3) where a foreign suit will be oppressive.

Where the parties bring suit in a foreign jurisdiction in order to evade a substantive law of their domicile which is based on a well-defined public policy, they will be enjoined. *Freich* v. *Henkly*, 122 Minn. 24, 141 N.W. 1096 (1913); *Miller* v. *Gitting*, 85 Md. 601, 37 Atl. 372 (1897); *Sandage* v. *Studebaker Bros.*, 142 Ind. 148, 41 N.E. 380 (1895). Divorce proceedings brought on grounds not recognized in the jurisdiction of the residents will be enjoined; the state having the power to compel its own citizens to respect its laws even beyond its territorial boundaries. *Richman* v. *Richman*, 266 N.Y.S. 513, 148 Misc. 387 (1933); *Johnson* v. *Johnson*, 261 N.Y.S. 523 (1933); *Greenberg* v. *Greenberg*, 218 N.Y.S. 87, 218 App. Div. 164 (1926). In enjoining a suit brought in avoidance of a gambling contract law, the *Miller* case, *supra*, held that the basis for the relief was the imperfect method of proof available to the foreign court in ascertaining the statute to be relied upon as a defense. While it is true that a creditor may on a just debt bring suit anywhere that he can obtain jurisdiction of the debtor, and unless it can be shown to be inequitable such suit will not be enjoined, still, as a resident the creditor must obey the laws of his state. He will, therefore, not be permitted to sue in a foreign jurisdiction in order to defeat the benefit to the debtor of exemption laws. *Greer* v. *Cook*, 88 Ark. 93, 113 S.W. 1009 (1908); *Keyser* v. *Rice*, 47 Md. 203, 28 Am. Rep. 448 (1877); *Mumper* v. *Wilson*, 72 Iowa 163, 33 N.W. 449 (1887); *Margarum* v. *Moon*, 63 N.J. Eq. 586, 53 Atl. 179 (1902);

*Snook* v. *Snetzer*, 25 Ohio St. 516 (1874). But in *Cole* v. *Young*, 24 Kans. 313 (1880) it was held that there must be some other equity than that the failure to enjoin would result in attachment of exempted property.

An injunction will issue to prevent concurrent litigation as when a creditor seeks to evade the operation of the insolvency laws of his state by suing in a foreign court in order to attach the debtor's property which should by virtue of bankruptcy pass to the assignee in insolvency. The creditor will not be permitted to gain this unjust preference. *Cole* v. *Cunningham, supra; Dehon* v. *Foster*, 4 Allen 545 (1862); *Hazen* v. *Lyndonville National Bank*, 70 Vt. 543, 41 Atl. 1046 (1898). The court will not enjoin a non-resident on this basis, as he has no duty to uphold the laws of any state but his own. *Barrett* v. *Russell*, 135 N.Y.S. 34, 75 Mis. Rep. 226 (1912); *Hawley* v. *State Bank of Chic.* 134 Ill. App. 96 (1907).

As to the third group, it is generally stated that equity will enjoin a suit which will result in fraud, gross wrong, or oppression. *Royal League* v. *Kavanaugh, supra; Mobile and Ohio Ry. Co.* v. *Parrent*, 260 Ill. App. 284 (1931); *Reed* v. *Hollingsworth*, 157 Iowa 94, 135 N.W. 37 (1912). It is now held that even where suit has been started in a foreign jurisdiction it will be enjoined where it has not been brought in good faith, but is an oppressive suit to vex and harass the defendant or to obtain an unconscionable advantage. *Mason* v. *Harler*, 84 Kan. 277, 114 Pac. 218 (1911); *Von Bernuth* v. *Von Bernuth*, 76 N.J. Eq. 177, 139 Am. St. Rep. 752 (1909); *Kempson* v. *Kempson*, 58 N.J. Eq. 94, 43 Atl. 97 (1899). Although mere inconvenience or added expense are generally not sufficient basis for an injunction, *Mason* v. *Harlow, supra; Freich* v. *Henkley, supra; Edgell* v. *Clark, supra;* still if these factors are excessive so as to make bringing suit without the domicile vexations, it will be enjoined. *Ex parte Crandall*, 52 Fed. (2d) 650 (1931); *O'Haire* v. *Burns*, 45 Colo. 432, 101 Pac. 755 (1909) *Banker's Life Co.* v. *Loring*, 217 Iowa 534, 250 N.W. 8 (1933); *Kern* v. *Cleveland C. C. & St. L. Ry.*, 204 Ind. 595, 185 N.E. 446 (1933).

The Ohio case is in line with the weight of authority and reaches a desirable result in preventing the defendant from attempting to evade the operation of a discharge in bankruptcy and in preventing him from bringing an oppressive suit in Czechoslovakia.

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